



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,156	03/27/2002	Hiroaki Munchira	220800US2XPCT	9787
22850	7590	11/18/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
WANG, QUAN ZHEN				
ART UNIT		PAPER NUMBER		
2613				
NOTIFICATION DATE		DELIVERY MODE		
11/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com

oblonpat@oblon.com

jgardner@oblon.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/089,156

**Applicant(s)**

MUNEHIRA ET AL.

**Examiner**

QUAN-ZHEN WANG

**Art Unit**

2613

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 15-18.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Quan-Zhen Wang/  
Examiner, Art Unit 2613

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed 11/5/2008 have been fully considered but they are not persuasive.

Applicant argues, the combination of Kerfoot, Ryu, Cao, and Hamada "does not describe or render obvious an amplification controller configured to modify a gain of at least one non-modulated spectrum slice optical signal component in order to maintain a predetermined overall gain profile of the non-modulated spectrum slice optical signal components when no signal is available for amplification for one of the non-modulated spectrum slice optical signal components, as is recited in Claim 15" (pages 3-4 of instant Remarks). However, as applicant admits, "Hamada describes in the abstract, as well as in col. 2, that the input signal and the output signal are used to detect a resultant gain of the amplifier. Further, based on this detecting, the gain is modified. Thus, if no input signal is detected in Hamada, then no gain modification is made." (see page 4 of the instant Remarks). In accordance with KSR, "It is common sense that familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle." See KSR, 137 S. Ct. at 1742, 82 USPQ2d at 1397. For the instant application, as it is clearly pointed out in the rejection of claim 15 in the office action dated on 8/15/2008, the modified system of Kerfoot, Ryu, and Cao only differs from the claimed invention in that Kerfoot, Ryu, and Cao do not specifically disclose an amplification controller configured to modify a gain of at least one non-modulated spectrum slice optical signal component in order to maintain a predetermined overall gain profile of the non-modulated spectrum slice optical signal components when no signal is available for amplification for one of the non-modulated spectrum slice optical signal components. However, using a controller to control an optical amplifier to set a gain to a predetermined profile is well known in the art. As an example, Hamada is cited to show using a controller to control an optical amplifier to set a gain to a predetermined profile is indeed well known in the art. Hamada clearly discloses utilizing a controller to control an optical amplifier to modify the gain to a predetermined gain profile (abstract, column 2, lines 13-32, figs. 1-6). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to incorporate a controller of Hamada into the modified system of Kerfoot, Ryu, and Cao. One of ordinary skill in the art would have been motivated to do so in order to provide a gain according to predetermined value.

For the above reasons, the rejection of claim 15 still stands. For the same reasons, the rejections of claims 16-18 still stand..